

**STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND
BUSINESS COURT**

**CHARLES B. EBEL,
Plaintiff,**

v.

**Case No. 17-157479-CB
Hon. James M. Alexander**

**JAMES B. RASOR and
RASOR LAW FIRM, PLLC,
Defendants.**

**OPINION AND ORDER RE: PLAINTIFF'S MOTION FOR RECONSIDERATION
PURSUANT TO MCR 2.119(F)**

This matter is before the Court on Plaintiff's Motion for Reconsideration Pursuant to MCR 2.119(F). The Court dispenses with oral argument in accordance with MCR 2.119(F)(2).

In review of Plaintiff's motion, the Court relies on MCR 2.119(F)(3), which provides in relevant part:

[A] motion for rehearing or reconsideration which merely presents the same issues ruled on by the court, either expressly or by reasonable implication, will not be granted. The moving party must demonstrate a palpable error by which the court and the parties have been misled and show that a different disposition of the motion must result from correction of the error.

"The grant or denial of a motion for reconsideration rests within the discretion of the trial court." *Charbeneau v Wayne Cty. Gen. Hosp.*, 158 Mich App 730, 733; 405 NW2d 151 (1987).

On February 22, 2017, Plaintiff filed the present Complaint, alleging that Defendants have failed to comply with their obligation under the parties' contract to pay Plaintiff the monies allegedly due to him in satisfaction of Plaintiff's Claim of Lien relating to the Scott Downey litigation. On March 8, 2017, the Court questioned its jurisdiction over the subject matter of the

action and determined that the present lawsuit does not qualify for either Business Court or Circuit Court jurisdiction. That same day, the Court dismissed the case without prejudice¹ in its Opinion and Order of Dismissal for Lack of Jurisdiction. Thereafter, Plaintiff timely filed his Motion for Reconsideration wherein he argues that the Court committed palpable error for the reasons that jurisdiction is proper in both Business Court and Circuit Court, particularly in light of his equitable claims including Unjust Enrichment and Declaratory Judgment.

With respect to Plaintiff's argument that this lawsuit qualifies for business court jurisdiction, the Court defers to the analysis within its March 8, 2017 Opinion and Order, which provides that business court jurisdiction is limited to actions involving a "business or commercial dispute" in which the amount in controversy exceeds \$25,000.00. See MCL 600.8035(1). The phrase "amount in controversy" refers to the amount of damages claimed. *Szyszlo v Akowitz*, 296 Mich App 40, 51; 818 NW2d 424 (2012). In other words, MCL 600.8035(1) requires that an action include a claim for monetary damages exceeding \$25,000.00 in order to qualify for business court jurisdiction. In this matter, Plaintiff is only seeking monetary damages in the amount of \$21,000.00, exclusive of attorney fees, costs, and interest. Since Plaintiff's lawsuit does not involve a claim for monetary damages in excess of \$25,000.00 as required by MCL 600.8035(1), this matter does not qualify for business court jurisdiction.

Regarding Plaintiff's argument that this lawsuit qualifies for circuit court jurisdiction based upon his equitable claims, the Court shall examine the nature of Plaintiff's equitable claims for purposes of this motion for reconsideration only.

In relation to his Unjust Enrichment claim, Plaintiff contends that he is requesting equitable relief such as the creation of an equitable lien, the imposition of a constructive trust, etc. Yet, the remedy Plaintiff is seeking under his Unjust Enrichment claim is not an equitable

¹ Plaintiff is not precluded from filing a new action as this matter was dismissed without prejudice.

lien,² but a monetary judgment in the amount of \$21,000.00 in addition to specific performance by Defendants “to specifically perform their obligations under the contract,”³ which denotes payment of the damages amount sought.⁴

A claim for unjust enrichment asks the Court to recognize an implied contract. *Barber v SMH (US), Inc*, 202 Mich App 366, 375; 509 NW2d 791 (1993). The Court will not imply a contract where an enforceable express contract between the parties covers the same subject matter. *HJ Tucker & Assoc, Inc v Allied Chucker & Engineering Co*, 234 Mich App 550; 595 NW2d 176 (1999). In consideration of Plaintiff’s drafting of Count III, the Court finds that the nature of Plaintiff’s claim is actually a breach of contract claim due to the fact that an express contract governs the subject matter of the dispute. Under Count III, Plaintiff also requests the Court to enter a Declaratory Judgment in his favor. However, Plaintiff does not specifically state what declaration of rights he is seeking.

Upon review of the allegations contained within Plaintiff’s Count IV, Declaratory Judgment, the Court again observes that Plaintiff is not seeking a declaration of rights by the Court.⁵ Instead, Plaintiff is only seeking monetary damages, attorney fees, interest, and costs.

² The Court notes that “[a] party that has an adequate remedy at law is not entitled to an equitable lien.” *Eastbrook Homes, Inc. v Treasury Dep’t*, 296 Mich App 336, 352–53; 820 NW2d 242 (2012).

³ See page 5 of Plaintiff’s Complaint under Count III – Unjust Enrichment.

⁴ See Paragraph 18 of Plaintiff’s Complaint on page 4.

⁵ MCR 2.605(A)(1) provides: “In a case of actual controversy within its jurisdiction, a Michigan court of record may declare the rights and other legal relations of an interested party seeking a declaratory judgment, whether or not other relief is or could be sought or granted.” It is well settled that: An “actual controversy” under MCR 2.605(A)(1) exists when a declaratory judgment is necessary to guide a plaintiff’s future conduct in order to preserve legal rights. *Int’l Union UAW v Cent Mich Univ Trs*, 295 Mich App 486, 495; 815 NW2d 132 (2012) (internal quotations and citations omitted). In *Skiera v Natl Indem Co*, 165 Mich App 184, 189-190; 418 NW2d 424 (1987), the Court of Appeals reasoned: “The purpose of the declaratory judgment rule was stated in 3 Martin, Dean & Webster, Michigan Court Rules Practice (3d ed), Rule 2.605, p 422: Declaratory judgment has been heralded as one of the most significant procedural reforms of the century. Its purpose is to enable parties, in appropriate circumstances of actual controversy, to obtain an adjudication of their rights **before actual injury occurs**, to settle matters before they ripen into violations of law or a breach of contractual duty, to avoid a multiplicity of actions by affording a remedy for declaring in one expedient action the rights and obligations of all litigants, or to avoid the strictures associated with obtaining coercive relief, when coercive relief is neither desired nor necessary to resolve the matter.” [Emphasis added]. The only dispute in this matter revolves around whether Defendants owe any monies for past

As noted in the March 8, 2017 Opinion and Order, courts are not bound by the labels that parties attach to their claims. *Manning v Amerman*, 229 Mich App 608, 613; 582 NW2d 539 (1998). Indeed, “[i]t is well settled that the gravamen of an action is determined by reading the complaint as a whole, and by looking beyond mere procedural labels to determine the exact nature of the claim.” *Adams v Adams* (On Reconsideration), 276 Mich App 704, 710-711; 742 NW2d 399 (2007).

Reviewing the Complaint in its entirety, the Court again finds that Plaintiff is not in fact seeking equitable relief, but rather a judgment of monetary damages in the total amount of \$21,000.00, exclusive of attorney fees, costs, and interest.

The Court has considered Plaintiff’s arguments in his reconsideration motion, as they relate to the March 8, 2017 Opinion and Order, and finds that Plaintiff’s arguments merely present the same issues ruled on by the Court and fail to demonstrate a palpable error by which the Court and the parties have been misled and show that a different disposition of the motion must result from correction of the error.

For the reasons stated herein, the Court denies Plaintiff’s Motion for Reconsideration Pursuant to MCR 2.119(F).

IT IS SO ORDERED.

May 9, 2017
Date

/s/James M. Alexander
Hon. James M. Alexander, Circuit Court Judge AM

legal services. Simply, the current action does not fit within any of the purposes for declaratory judgment. The disputed “injury” in this case has already occurred.